IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9316 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YASMINBANU ALIAS SONI NIYAZKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR PB PARMAR for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 19.6.2000, page-11, in respect of petitioner passed by respondent no. 1 in exercise of his

powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is a 'dangerous person' within the meaning of Sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at subjective satisfaction, the detaining authority has placed reliance on 3 IPC cases referred to in the grounds of detention and statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, such statements were verified by the detaining authority on 18.6.2000 and on the very next day, i.e. on 19.6.2000 he passed an order of detention, which is challenged in this petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in- reply, in reply to the main petition, controverting the grounds of attack mentioned in the memo of petition.

4. Shri PB Parmar learned advocate for the petitioner has argued that the detaining authority has placed reliance on the statements of two anonymous witnesses which were recorded on 16.6.2000 and 17.6.2000, respectively and both the statements were verified by the detaining authority on 18.6.2000 and on the very next day i.e. 19.6.2000 passed he an order of detention against the petitioner. He has argued that looking to the dates of statements of witnesses, date of verification of statements and date of impugned order, it clearly appears that the detaining authority has not applied his mind before passing an order by claiming privilege under sec. 9(2) of the Act. He has placed reliance on the case of Kalidas Chandubhai Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. This present case squarely falls within the four corners of the cited case.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 19.6.2000 passed by respondent no. 1 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H.MEHTA, J.)

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